Supreme Court, U. S.
FILED
MAR 6 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1367

CHARLES COLE,

Petitioner,

versus

LOUISIANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY, STATE OF LOUISIANA

GARLAND R. ROLLING
319 Metairie Road
Metairie, Louisiana 70005
Attorney for Petitioner

SCOFIELDS' QUALITY PRINTERS, P. O. BOX 53096, N. O., LA. 70153 - 504/822-1611

INDEX

Page

REFERENCE TO OPINIONS BELOW 2

JURISDICTION 2

QUESTION PRESENTED FOR REVIEW 3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 4

STATEMENT OF THE CASE 6

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW 7

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 18

APPENDIX:

1. Indictment for aggravated battery, filed February 21, 1978 ..... 1a
2. Indictment for manslaughter, filed June 28, 1979 ..... 3a
3. Motion for Discovery of Testimony Before Grand Jury (battery case) 4a
4. Motion for Discovery of Testimony Before Grand Jury (manslaughter case) 6a
5. Memorandum In Support of Discovery Motions (battery case) 8a

INDEX (Continued)

Page

6. Memorandum In Support of Discovery Motions (manslaughter case) 10a
7. Application for Remedial Writs, Supreme Court of Louisiana, docket no. 66,142 .....11a
8. Application for Remedial Writs, Supreme Court of Louisiana, docket no. 66,141 .....12a
9. Denial of Remedial Writs by Supreme Court of Louisiana, docket no. 66,142 .....14a
10. Denial of Remedial Writs by Supreme Court of Louisiana, docket no. 66,141 .....15a

TABLE OF AUTHORITIES

Cases:

Douglas Oil Company of California v. Petrol Stops Northwest, ___ U.S. ___, 99 S.Ct. 1667 (1979) 8,17,18

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 74 S.Ct. 396 (1954) 3

State v. Ivy, 307 So.2d 587 (La., 1975) 10

TABLE OF AUTHORITIES (Continued)

Page

State v. Sheppard, 350 So.2d 615 (La., 1977) 9

Wardius v. Oregon, 412 U.S. 470, 93 S.Ct. 2208 (1973) 15,16

Williams v. Florida, 399 U.S. 78, 90 S.Ct. 1893 (1970) 12,14,15

Statutes:

Fed. Rules of Civil Proc., Rule 26(a) 11

La. Code of Crim. Proc. Ann. art. 66 4,8,16

art. 434 5,18

La. Code of Civil Proc. Ann. art. 1421 11

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No.

CHARLES COLE,

Petitioner,

versus

LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE TWENTY-SECOND JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. TAMMANY, STATE OF LOUISIANA

Petitioner prays that a writ of certiorari issue to review the decision of the Twenty-Second Judicial District Court for the Parish of St. Tammany, State of Louisiana, rendered on September 12, 1979.

REFERENCE TO OPINIONS BELOW

The decision of the state district court, which denied petitioner's motion for discovery of grand jury testimony on September 12, 1979, is unreported. Petitioner's application to the Supreme Court of Louisiana for a supervisory writ to review this decision was denied without opinion, on December 7, 1979. This memorandum decision has not yet been reported, but is set out in the Appendix hereto, at pp. 14a and 15a.

JURISDICTION

Petitioner's motion for discovery of grand jury testimony was heard by the district court on September 4, 1979, and was taken under advisement by the court. On September 12, 1979, the district court denied the motion without opinion or comment, by a notation written upon the face of the written motion. A copy of the motion together with the denial inscribed thereon by the district court is contained in the Appendix, at pp. 4a and 6a.

As this decision was interlocutory, and not a conviction, the petitioner had no automatic review provided for by Louisiana law. Article 5, Section 5 of the Louisiana Constitution provided for discretionary review of such a decision under the Louisiana Supreme Court's supervisory jurisdiction; and petitioner sought

review of the decision through an application for supervisory writs. This application for writs was denied by the Louisiana Supreme Court, without opinion, on December 7, 1979. There is no provision in Louisiana law for seeking a rehearing of the denial of discretionary writs.

With the denial by the Louisiana Supreme Court of supervisory writs, the decision of the district court was the highest court of Louisiana in which a decision could be had; and it is the decision of the district court which the petitioner here seeks to have reviewed. The limit of time for applying to this Court for a writ of certiorari was from the date (December 7, 1979) when the supervisory writs were refused. *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 74 S.Ct. 396 (1954).

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3), petitioner having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

QUESTION PRESENTED FOR REVIEW

Whether, due to the lack of other satisfactory and reciprocal pre-trial discovery powers granted to a criminal defendant, the defendant is entitled to the inspection of testimony of the witnesses before the grand jury in the case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves the following provisions of the Louisiana Code of Criminal Procedure:

La. Code of Crim. Proc. Ann. art. 66 (1980 Supp.) *"Subpoena of witnesses to appear before attorney general and district attorney"*

Upon written motion of the attorney general or district attorney setting forth reasonable grounds therefor, the court may order the clerk to issue subpoenas directed to the persons named in the motion, ordering them to appear at a time and place designated in the order for questioning by the attorney general or district attorney respectively, concerning any offense under investigation by him. The court may also order the issuance of a subpoena duces tecum.

The contumacious failure or refusal of the person subpoenaed to appear is punishable as a contempt of court.

The attorney general or district attorney, respectively, may determine who shall be present during the examination and may

order all persons excluded, except counsel for the person subpoenaed.

La. Code of Crim. Proc. Ann. art. 434 (1980 Supp.) *"Secrecy of grand jury meetings; procedures for crimes in other parishes"*

A. Members of the grand jury, all other persons present at a grand jury meeting, and all persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury. However, after the indictment, such persons may reveal statutory irregularities in grand jury proceedings to defense counsel, the attorney general, the district attorney, or the court, and may testify concerning them. Such persons may disclose testimony given before the grand jury, at any time when permitted by the court, to show that a witness committed perjury in his testimony before the grand jury. A witness may discuss his testimony given before the grand jury with counsel for a person under investigation or indicted, with the attorney general or the district attorney, or with the court. * * *

STATEMENT OF THE CASE

This case involves identical issues in two prosecutions against the petitioner in the same district court, and petitioner presents the common issues in a single petition for certiorari, as provided for by Rule 23, Section 5 of the Rules of this Court.

Petitioner Charles Cole is under indictment for aggravated battery and for manslaughter, in two separate proceedings in the Twenty-Second Judicial District Court for the Parish of St. Tammany, State of Louisiana, in cases nos. 62,919 and 71,406 of the docket of that court, respectively. Copies of the indictments are found in the Appendix, at pp. 1a and 3a.

The petitioner filed motions for discovery of testimony before the grand jury, and filed memorandums in support thereof. The motions are contained in the Appendix, at pp. 4a and 6a, and excerpts from the memorandums are contained in the Appendix, at pp. 8a and 10a.

These motions were heard by the district court on September 4, 1979, and after being taken under advisement, were denied on September 12, 1979.

Petitioner then applied to the Supreme Court of Louisiana for supervisory writs. Excerpts from these applications are contained in the Appendix, at pp. 11a and 12a. The Supreme Court of Louisiana denied writs on December 7, 1979.

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner's motion for discovery of grand jury testimony alleged that he ". . . desires and is constitutionally entitled to the production of the transcript of the testimony before the grand jury . . .", and in his memoranda filed with the district court, detailed his constitutional claim under the Fourteenth Amendment:

> "However, it is the contention of the defendant that, absent some real and practical alternative for obtaining in advance of trial the testimony of material witnesses, the denial of access by the defendant to the grand jury testimony constitutes a denial of due process, prohibited by . . . the Fourteenth Amendment of the United States Constitution." *Memorandum in Support of Discovery Motions*, p. 3.

The constitutional claim was reiterated in petitioner's application to the Supreme Court of Louisiana:

> "It is the basic contention of the defendant that, absent some real and practical alternative for obtaining in advance of trial the testimony of material witnesses, the denial of access by the defendant to the grand jury testimony constitutes a denial of due process, prohibited by . . . the Fourteenth Amendment of the United States Constitution." *Application for Remedial Writs, State v. Charles Cole*, Nos. 66,141 and 66,142, La.Sup.Ct., p. 4.

Both the trial-court motion for discovery and the application for writs were denied by the respective courts, without opinion or written reasons therefor.

REASONS FOR GRANTING THE WRIT

The petitioner readily admits that the issue of access to grand jury testimony has been decided — generally in the negative — on a number of prior occasions by this Court. See, e.g., *Douglas Oil Company of California v. Petrol Stops Northwest*, ____ U.S. ____, 99 S.Ct. 1667 (1979).

However, petitioner wishes to emphasize that his access to grand jury testimony is not his ultimate objective. The petitioner's goal is to obtain statements of the witnesses who are likely to testify at trial. As the petitioner will herein demonstrate, his access to the grand jury testimony may be the only practical means by which he can even begin to approach a reciprocity with the State of pre-trial investigatory power.

There is an alternative, acceptable to the petitioner, other than actual access to the grand jury transcripts; and the petitioner in his memoranda filed with the district court set forth this alternative. The alternative is that the petitioner be allowed a subpoena power commensurate with that granted to the State by Article 66, Louisiana Code of Criminal Procedure *supra*, at p. 4.

The petitioner's motion for discovery of the grand jury testimony seeks the production of the testimony of the prosecution witnesses. The defendant hopes thereby to obtain some clearer understanding of precisely what factual issues will be presented at trial, as revealed by the testimony.

However, the obtaining of the grand jury testimony is not essential, if the petitioner has available to him some other practical means of obtaining the testimony. If indeed the petitioner were able to privately interview and take the statements of prosecution witnesses — specifically those who testified before the grand jury — then there would be no need for the petitioner to examine the grand jury testimony. It is therefore the knowledge of these witnesses that the petitioner seeks to discover, and not necessarily their verbatim statements as presented to the grand jury.

The petitioner's primary purpose in seeking this particular discovery is the proper presentation of a defense to the charges against him: to know in advance of trial what the factual issues will be in order that an effective defense may be prepared.

The transcript of grand jury testimony, should the same be made available to the petitioner, could not be used for impeachment at trial, should some inconsistency in prior testimony arise. *State v. Sheppard*, 350 So.2d 615 (La., 1977); *State v. Ivy*, 307 So.2d 587 (La.,

1975). Thus, the transcript would be available for information purposes only under Louisiana law, and could not be used against witnesses at trial.

Statements obtained other than through the transcript would be available for use as impeachment, and it would be more advantageous to the petitioner because of this consideration to obtain statements through other means, if possible.

However, following the denial of petitioner's application to the Supreme Court of Louisiana, the petitioner applied to the district court for the power to subpoena witnesses for pre-trial statements, which was denied by the district court on January 8, 1980. This possible alternative for discovery has now been closed.

It is the primary contention of the petitioner that, absent some real and practical alternative for obtaining in advance of trial the testimony of material witnesses, the denial of such access by the petitioner to the grand jury testimony constitutes a denial of due process, prohibited by the Fourteenth Amendment of the United States Constitution.

In order the better to assess the petitioner's constitutional right to the discovery he seeks, we here examine some recent developments in the field of pre-trial discovery in criminal cases.

In civil cases, regardless of the specific procedures established for pre-trial discovery, the common feature of such discovery devices regardless of the particular jurisdiction is *reciprocity*. Each party litigant has available to him the same methods of discovery as does any other party litigant. This equality of treatment is recognizable in the fact that our laws establishing civil discovery devices speak not of "plaintiffs" and "defendants," but rather speak of "parties":

> "Parties may obtain discovery by one or more of the following methods: * * *" La. Code of Civil Proc. Ann. art. 1421; Federal Rules of Civil Procedure, Rule 26(a).

As attractive as may be the rule of reciprocity in civil discovery, the application of such an absolute rule in criminal cases encounters some distinct constitutional problems.

In the not too distant past, pre-trial discovery in criminal cases was minimal. The amount of discovery to which a criminal defendant was entitled was in large part limited to the "notice" requirements of the Sixth Amendment. Until very recently, the practice in Louisiana and in a number of other jurisdictions was a very narrow, limited discovery. The ideal of reciprocity as in civil suits was hindered in application to criminal cases by the view that the Bill of Rights for-

bade the defendant from being required to present certain information. This consideration was set forth by Mr. Justice Black in his dissent in *Williams v. Florida*, 399 U.S. 78, 90 S.Ct. 1893 (1970):

> ". . . tactical advantage to the defendant is inherent in the type of trial required by our Bill of Rights. The Framers were well aware of the awesome investigative and prosecutorial powers of government and it was in order to limit those powers that they spelled out in detail in the Constitution the procedure to be followed in criminal trials. * * * All of these rights are designed to shield the defendant against state power. None are designed to make convictions easier and taken together they clearly indicate that in our system the entire burden of proving criminal activity rests on the State. The defendant . . . has an absolute, unqualified right to compel the State to investigate its own case, find its own witnesses, prove its own facts, and convince the jury through its own resources."

The decision which prompted Mr. Justice Black's dissent involved the first indication that the Court approved reciprocity as a basis for enlarging pre-trial discovery. In the *Williams* case, at issue was a Florida statute which required the defendant, on demand of the prosecutor, to give notice of his intention to use an alibi

defense at trial, by providing the place where the defendant claimed to have been and the names and addresses of any witnesses he intends to use at trial to support the alibi. In response, the State was required to provide the defendant with the names and addresses of any witnesses the State intended to use at trial to rebut the alibi. Both sides have a continuing duty to disclose, and the sanction for failure to comply with the procedure is the exclusion of any alibi evidence except for the defendant's own testimony, or the exclusion of any rebuttal testimony by the State.

Williams initially objected to the procedure on constitutional grounds, asking for a protective order. He asserted his right to remain silent was violated by requiring him to give the State information which might be useful in convicting him. His motion for a protective order was denied, and he complied by giving the State the name and address of his alibi witness. Through pre-trial deposition, the State successfully attacked the credibility of the alibi witness, and Williams was subsequently convicted.

The majority of the Court, with the exceptions of Mr. Justice Black and Mr. Justice Douglas, found little merit in the defendant's Fifth Amendment argument. The Court instead focused on the question of reciprocity:

> "We need not linger over the suggestion that the discovery permitted the State against

petitioner in this case deprived him of 'due process' or a 'fair trial.' Florida law provides for liberal discovery by the defendant against the State, and the notice-of-alibi rule is itself carefully hedged with reciprocal duties requiring State disclosure to the defendant. * * * The adversary system of justice is hardly an end to itself; it is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played. We find ample room in that system, at least as far as 'due process' is concerned, for the instant Florida rule, which is designed to enhance the search for truth in the criminal trial by insuring both the defendant and the State ample opportunity to investigate certain facts crucial to the determination of guilt or innocence." *Williams v. Florida, supra.*

Important to the assessment of the effect of reciprocity upon the *Williams* decision is footnote 11 of that opinion:

> "In addition to Florida, at least 15 other states have alibi-notice requirements of one sort or another. *** We do not, of course, decide that each of these alibi-notice provisions is necessarily valid in all respects: that conclusion must await a specific context and an inquiry, for example, into whether the defendant enjoys reciprocal discovery against the State."

The Chief Justice, in a concurring opinion in *Williams,* saw an "added benefit" in the alibi-notice rule, in that prosecutorial investigation of alibis may help to dispose of cases prior to trial — either by dismissal if the alibi is well-founded, or as an incentive to plea bargain if it is not. The Chief Justice concluded:

> "In either case the ends of justice will have been well-served and the processes expedited. These are the likely consequences of an enlarged and truly reciprocal pre-trial disclosure of evidence and the move away from the 'sporting contest' idea of criminal justice."

The ideal of reciprocity was again set forth in *Wardius v. Oregon,* 412 U.S. 470, 93 S.Ct. 2208 (1973), which elevated reciprocity in criminal discovery to constitutional status. At issue was an Oregon statute which required any defendant who intended to rely upon an alibi to serve upon the prosecutor the particulars of his alibi and the names and addresses of all alibi witnesses. Failure to comply could result in the exclusion of all alibi testimony, including that of the defendant as to the alibi. The statute imposed no reciprocal obligation upon the State. The Court noted at the outset:

> "We hold that the Due Process Clause of the Fourteenth Amendment forbids enforcement of alibi rules unless reciprocal discovery

rights are given to criminal defendants. Since the Oregon statute did not provide for reciprocal discovery, it was error for the court below to enforce it against petitioner, and his conviction must be reversed." 412 U.S., at 472; 93 S.Ct., at 2211.

"We . . . hold that in the absence of a strong showing of state interests to the contrary, discovery must be a two-way street." 412 U.S., at 475; 93 S.Ct., at 2212.

Under this concept of reciprocity, the petitioner herein seeks the opportunity to obtain the statements of trial witnesses. While it might be rather disingenuously noted that the defense is free to go out to interview whomever it pleases, the legal power of a Louisiana defendant to obtain statements does not approach that of the State, under Article 66, Louisiana Code of Criminal Procedure, *supra*, under which the State has the right to subpoena witnesses for statements.

Without a similar power — and the defendant has been denied such a power — it cannot be fairly said that there is reciprocity in investigatory powers afforded the defendant.

The statements of the trial witnesses are contained in the grand jury transcript, and the petitioner does not want any part of the proceedings other than actual testimony of witnesses.

This Court summarized the interests served by the confidentiality of grand jury proceedings, in *Douglas Oil Company of California v. Petrol Stops Northwest*, ____ U.S. ____, 99 S.Ct. 1667 (1979):

"First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but found innocent by the grand jury will not be held up to public ridicule." 99 S.Ct., at 1673.

These considerations appear to be addressed to the possible harms of opening grand jury sessions to the general public and to persons not interested in the matters before the grand jury, rather than to a disclosure to the person indicted after indictment. In this case, the petitioner has already been indicted, so the concern of him fleeing prior to indictment or attempting to influence the grand jurors does not exist. The

concern of the public ridicule for an unindicted person similarly does not exist in the case of a defendant seeking disclosure of grand jury testimony. And the instant case does not involve the use of grand jury transcripts in another judicial proceeding, as was involved in the *Douglas Oil Company* case.

There have been no recent cases in which the Court has considered the question of secrecy of grand jury testimony in state proceedings. In this case, the petitioner seeks discovery of the grand jury testimony in order to properly prepare for the issues at trial, and has no other means available to him to obtain statements of trial witnesses.

CONCLUSION

Louisiana law specifically grants the prosecution the power to subpoena witnesses for pre-trial statements. Under the Due Process Clause, the petitioner is entitled to a similar power. Since the petitioner is thus constitutionally entitled to obtain statements from those witnesses who testified before the grand jury, and since Article 434, Louisiana Code of Criminal Procedure, *supra*, allows the defense to seek such statements, the petitioner should be allowed to inspect and copy the testimony given before the grand jury in his case.

The denial of the power to subpoena witnesses for pre-trial statements leaves the petitioner no alternative but inspection of the grand jury transcript in order to prepare for trial. And a denial of this right of inspection of the grand jury testimony would effectively grant the State a pre-trial discovery right without a similar, reciprocal right being granted to a defendant.

For which reasons, petitioner prays that a writ of certiorari issue herein to review the decision of the Twenty-Second Judicial District Court for the Parish of St. Tammany, State of Louisiana, which denied petitioner the right to inspect the grand jury testimony in his case.

/S/ Garland R. Rolling

GARLAND R. ROLLING
319 Metairie Road
Metairie, Louisiana 70005
(504) 835-2543
Attorney for Petitioner

APPENDIX

No. 62,919

STATE OF LOUISIANA

versus

CHARLES COLE

Indictment for
Aggravated Battery

A TRUE BILL

/s/ MAX W. WOOD
Foreman of the Grand Jury.

STATE OF LOUISIANA—
PARISH OF ST. TAMMANY

TWENTY-SECOND JUDICIAL DISTRICT COURT

February 9, 1978

The Grand Jurors of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of St. Tammany, in the name and by the authority of the said State, upon their oath find and presents:

That one, Charles Cole, late of the Parish of St. Tammany, on or about the 9th day of September, in the year of our Lord, one thousand nine hundred and seventy-~~eight~~ five, in the Parish of St. Tammany, aforesaid, and within the jurisdiction of the Twenty-second Judicial District Court of Louisiana, for the Parish of St. Tammany:

Unlawfully violated R.S. 14:34, by committing a battery with a dangerous weapon, to-wit; a baseball bat, upon the person of Billy Ray Crain.

contrary to the form of the Statutes of the State of Louisiana in such cases made and provided, and against the peace and dignity of the same.

/s/ KURT V. SINS
Asst. District Attorney of the
22nd Judicial District of
Louisiana

Filed: February 21, 1978

STATE OF LOUISIANA—
PARISH OF ST. TAMMANY

TWENTY-SECOND JUDICIAL DISTRICT COURT

June 28, 1979

The Grand Jurors of the State of Louisiana, duly impaneled and sworn in and for the body of the Parish of St. Tammany, in the name and by the authority of the said State, upon their oath find and presents:

That one, CHARLES COLE, late of the Parish of St. Tammany, on the 17th day of May, in the year of our Lord, one thousand nine hundred and seventy nine, in the Parish of St. Tammany, aforesaid, and within the jurisdiction of the Twenty-second Judicial District Court of Louisiana, for the Parish of St. Tammany:

Unlawfully killed John Fitzmorris, Jr. in violation of R.S. 14:31

contrary to the form of the Statutes of the State of Louisiana in such cases made and provided, and against the peace and dignity of the same.

/s/ JAMES GLEASON, III
Asst. District Attorney of the
22nd Judicial District of
Louisiana

STATE OF LOUISIANA
22ND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY

STATE OF LOUISIANA

versus No. 62,919 "D"

CHARLES COLE

Filed: August 13, 1979 /s/ EILEEN PFISTER
Dy. Clk.

MOTION FOR DISCOVERY OF
TESTIMONY BEFORE GRAND JURY

Now into court through undersigned counsel comes the defendant, Charles Cole, and upon suggesting to the court that the defendant desires and is constitutionally entitled to the production of the transcript of the testimony before the grand jury that returned the indictment herein against the defendant:

IT IS ORDERED that the District Attorney for the Parish of St. Tammany show cause, on the ____ day of _____, 1979, at ____ o'clock, why the defendant should not be given access to the recorded testimony

before the grand jury in this case, for the purposes of inspection and copying.

Covington, Louisiana, this ____ day of _____, 1979.

JUDGE

/s/ GARLAND R. ROLLING
GARLAND R. ROLLING
Attorney for Defendant
Post Office Box 9250
Metairie, Louisiana 70055
835-2543

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been mailed, postage prepaid, to the District Attorney for the Parish of St. Tammany, on the 10th day of August, 1979.

/s/ GARLAND R. ROLLING
GARLAND R. ROLLING

"The Court denies this motion.
Sept. 12, 1979

/s/ HILLARY J. CRAIN
District Judge"

STATE OF LOUISIANA
22ND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY

STATE OF LOUISIANA

versus No. 71,406

CHARLES COLE

Filed: August 13, 1979 /s/ EILEEN PFISTER
Dy. Clk.

MOTION FOR DISCOVERY OF
TESTIMONY BEFORE GRAND JURY

Now into court through undersigned counsel comes the defendant, Charles Cole, and upon suggesting to the court that the defendant desires and is constitutionally entitled to the production of the transcript of the testimony before the grand jury that returned the indictment herein against the defendant:

IT IS ORDERED that the District Attorney for the Parish of St. Tammany show cause, on the ____ day of _____, 1979, at ____ o'clock, why the defendant should not be given access to the recorded testimony

before the grand jury in this case, for the purposes of inspection and copying.

Covington, Louisiana, this ____ day of _____, 1979.

_____
JUDGE

/s/ GARLAND R. ROLLING
GARLAND R. ROLLING
Attorney for Defendant
Post Office Box 9250
Metairie, Louisiana 70055
835-2543

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion has been mailed, postage prepaid, to the District Attorney for the Parish of St. Tammany, on the 10th day of August, 1979.

/s/ GARLAND R. ROLLING
GARLAND R. ROLLING

"Motion denied.
Sept. 12, 1979

/s/ HILLARY J. CRAIN
District Judge"

STATE OF LOUISIANA
22ND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY

STATE OF LOUISIANA

versus No. 62,919

CHARLES COLE

Filed: _____ _____
Dy. Clk.

MEMORANDUM IN SUPPORT OF
DISCOVERY MOTIONS

MAY IT PLEASE THE COURT:

The Motion for Discovery, Application for a Bill of Particulars and Motion for Discovery of Testimony Before Grand Jury have been filed by the defendant not as a matter of course, but rather to properly prepare the defense for trial.

* * *

In the hope of convincing the court of the defendant's good faith in pursuing these motions, the defend-

ant will here set forth precisely what it is that the defendant seeks, why he seeks it, and why the defendant is entitled to it.

* * *

The defendant's right to inspection of the grand jury testimony is admittedly more arguable. However, it is the contention of the defendant that, absent some real and practical alternative for obtaining in advance of trial the testimony of material witnesses, the denial of access by the defendant to the grand jury testimony constitutes a denial of due process, prohibited by Article I, Section 2 of the Louisiana Constitution, and by the Fourteenth Amendment of the United States Constitution.

* * *

STATE OF LOUISIANA
22ND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY

STATE OF LOUISIANA

versus No. 71,406

CHARLES COLE

Filed: _____ _____
Dy. Clk.

MEMORANDUM IN SUPPORT
OF DISCOVERY MOTIONS

MAY IT PLEASE THE COURT:

The legal grounds in support of defendant's motions are fully set forth in a memorandum filed in case number 62,919 of this Court and the same is hereby incorporated by reference.

/s/ GARLAND R. ROLLING
GARLAND R. ROLLING
Attorney for Defendant
Post Office Box 9250
Metairie, Louisiana 70055
835-2543

IN THE
SUPREME COURT OF LOUISIANA

No. 66,142

STATE OF LOUISIANA

versus

CHARLES COLE

APPLICATION FOR REMEDIAL WRITS TO THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. TAMMANY,
NO. 62,919

---

* * *

But here again the defendant reiterates that his purpose is knowledge of the facts to be brought up at trial, and not lying in wait with the grand jury transcript in order to impeach the prosecution witnesses.

In sum, the defendant seeks the information for the same general purposes that the State will use the information: trial preparation.

It is the basic contention of the defendant that, absent some real and practical alternative for obtaining in advance of trial the testimony of material witnesses, the denial of access by the defendant to the grand jury testimony constitutes a denial of due process, prohibited by Article 1, Section 2 of the Louisiana Constitution, and by the Fourteenth Amendment of the United States Constitution.

* * *

IN THE
SUPREME COURT OF LOUISIANA

No. 66,141

STATE OF LOUISIANA

versus

CHARLES COLE

APPLICATION FOR REMEDIAL WRITS TO THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. TAMMANY,
NO. 71,406

---

* * *

In sum, the defendant seeks the information for the same general purposes that the State will use the information: trial preparation.

It is the basic contention of the defendant that, absent some real and practical alternative for obtaining in advance of trial the testimony of material witnesses, the denial of access by the defendant to the grand jury testimony constitutes a denial of due process, prohibited by Article 1, Section 2 of the Louisiana Constitution, and by the Fourteenth Amendment of the United States Constitution.

* * *

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

STATE OF LOUISIANA

versus No. 66,142

CHARLES COLE

In Re: Charles Cole, applying for remedial writs, Parish of St. Tammany, Number 62,919.

December 7, 1979

Writ denied.

FAB
FWS
JAD
PFC
WFM
JLD

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans

December 7, 1979
/s/ FRANS J. LABRANCHE, JR.
Clerk of Court

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

STATE OF LOUISIANA

versus No. 66,141

CHARLES COLE

In Re: Charles Cole, applying for remedial writs, Parish of St. Tammany, Number 71,406.

December 7, 1979

Writ denied.

FAB
FWS
JAD
PFC
WFM
JLD

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans

December 7, 1979
/s/ FRANS J. LABRANCHE, JR.
Clerk of Court